

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 23.10.2019  
CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.3753 of 2013  
and M.P.No.1 of 2013

Subramaniam Mudaliyar

... Petitioner

Vs.

Muthukumaran

... Respondent

Petition filed under Section 115 of the Constitution of India against the fair and decreetal order in I.A.No.162 of 2012 in O.S.No.144 of 1999 dated 10.07.2013 on the file of the Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.N.Suresh  
For Respondent : No appearance

O R D E R

Challenging the fair and final order passed in I.A.No.162 of 2012 in O.S.No.144 of 1999 on the file of the Principal Subordinate Court, Villupuram, the plaintiff has filed the above Civil Revision Petition.

2.Since the notice sent to the respondent was not served, the petitioner effected paper publication pursuant to the orders of this Court. In spite of the name of the respondent being printed in the cause list, none appeared for him.

3.The plaintiff filed the suit in O.S.No.144 of 1999 for recovery of money. Since the defendant did not appear before the trial Court, the trial Court passed an exparte decree on 26.07.2001. Thereafter, the defendant filed an application in I.A.No.162 of 2012 to condone the delay of 3288 days in filing the application to set aside the exparte decree dated 26.07.2001. In the affidavit filed in support of the petition, the respondent/defendant has stated that he was suffering from jaundice from 01.07.2001 and was bed ridden and therefore, he could not appear before the trial Court. The plaintiff filed his counter and opposed the application. The trial Court taking a very liberal approach condoned the delay of 3288 days on payment of costs of Rs.1,000/-.

4.Except the averment stated in the affidavit filed in support of the petition, the defendant has not produced any

evidence to establish that he was suffering from jaundice for more than nine years. Pursuant to the exparte decree passed on 26.07.2001, the plaintiff filed an Execution Petition in E.P.No.113 of 2011. Only after receiving the summons in the Execution Petition, the respondent/defendant filed the application in I.A.No.162 of 2012 to condone the delay of 3288 days.

5.The reasoning given by the respondent for condoning the inordinate delay of 3288 days cannot be accepted for the reason that the said averments are not supported by any evidence.

6.In the judgment reported in (2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another] the Hon'ble Supreme Court held that unless the party seeking for condonation of delay gives sufficient cause for the delay, the delay should not be condoned.

7.The ratio laid down by the Hon'ble Supreme Court squarely applies to the present case.

8.In the case on hand, in the absence of sufficient cause, the trial Court should not have condoned the delay. The trial Court had committed an error in condoning the inordinate delay of 3288 days in the absence of sufficient cause shown by the respondent/defendant. In these circumstances, the fair and decreetal order passed in I.A.No.162 of 2012 are liable to be set aside. Accordingly, the same are set aside. The application in I.A.No.162 of 2012 in O.S.No.144 of 1999 stands dismissed. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

va

To  
The Principal Subordinate Judge, Villupuram.

+1cc to Mr.N.Suresh, Advocate, S.R.No.89111

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PP(CO)  
CS/04/12/2019